

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISION

A) INTRODUCTION

This report summarises the outcome of a recent appeal decision by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) relative to the case set out below.

B) RECOMMENDATION

Members are asked to note the contents of the report.

C) DETAILS OF APPEAL DECISION

Planning application reference: 13/02356/PP & 14/00265/ENFSH
Planning appeal reference: ENA-130-2023
Proposal: Erection of fence with trellis.
Location: Hapland, 48 Charlotte Street, Helensburgh,
Date of decision: 23rd June 2016

Planning permission was sought for the erection of a fence and installation of 2 security cameras at Hapland, 48 Charlotte Street, Helensburgh. This was approved in March 2014. The fence is located to the front of Hapland and borders the next door property, Cue Cottage. The proposed feather board fence was to be approximately 1.8m high with a 0.3m trellis (total height 2.1m) and was to be built on the border of Cue Cottage. The reasons stated by the applicant for the erection of a fence and installation of cameras were for added security and privacy.

This property is a Category B listed building which is a detached dwellinghouse within the Upper Helensburgh Conservation Area as defined by the adopted Local Development Plan.

An enforcement case was opened in November 2014 as it was alleged that the height of the fence was not what was approved. Contact was made with the owner of Hapland and a series of letters were written on 15th January, 4th March and 2nd June and a site visit was made to the complainant on 13 January 2015 and to the applicant on 30th January 2015.

An enforcement notice was served on the owner of Hapland on 26th February 2016. The reasons for serving the notice were that it was considered that the additional height of the fence over that approved means that the fence is an incongruous, overbearing and dominant feature when viewed from Cue Cottage. It was visually intrusive, visually discordant and undermines the amenity of this adjoining property and the setting of Hapland itself which is Category B listed. The increased height of the fence and the trellis taken together was considered unacceptable and is contrary to Local Development Plan Policies LDP 3 and Supplementary Guidance Policies SG LDP ENV 16(a) and SG LDP ENV 17 which presume against development that detrimentally affects a listed building and which does not preserve or enhance the character or appearance of a conservation area.

Subsequently, the applicant appealed that decision and the appeal was processed via written representations. In the event, the Reporter upheld the enforcement notice but allowed the appeal to the extent that she varied the terms of the enforcement notice.

- The Reporter upheld the enforcement notice but allowed the appeal to the extent that she varied the terms of the enforcement notice dated 26th February 2016 subject to the variation of the terms of the notice by deleting the words "Remove the 0.3 metre trellis" and replacing them with the words "Remove the section of trellis that lies along the southern and eastern boundaries of Cue Cottage from the south western corner of the fence where it is in line with the foot of the entrance steps to Hapland to the eastern end point of the fence". She also varied the description of the breach to state "Erection of a fence with trellis not in accordance with approved plans". Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.
- The appeal on ground (c) Planning Permission is not required.
Based on the site photographs the Reporter considered that the balance of probability is that the ground height had been altered to some degree on the appellant's side. Irrespective of whether the ground levels have been altered the measurements that were taken of the fence in relation to current ground levels on the appellant's side show that it presently exceeds the permitted height by between 2 to 30 centimetres along its length. It therefore did constitute a breach of planning control and the appeal failed on ground (c).
- The appeal on ground (e) The Enforcement Notice was served wrongly
The Reporter was content that the notice was correctly served and finds that the appeal on ground (e) fails.
- The appeal on ground (f) The steps specified in the notice exceed what is necessary to remove the breach of planning control
On the basis of the impact of the increased fence height on the amenity of Cue Cottage the Reporter concluded that the requirement to remove the trellis along the southern boundary of Cue Cottage is not excessive in order to remedy the injury to amenity of that property. The section of trellis that runs along the side boundary between Hapland and Cue Cottage has limited impact due to it running in a north - south direction and being situated mostly behind the front elevation of the neighbouring two storey dwelling. She did not consider that it has any significant adverse effect on the amenity of Cue Cottage. It was considered that this section improved the amenity of both dwellings. The Reporter therefore found that it would be excessive to seek the removal of the full extent of the trellis.
The notice is therefore varied to allow the retention of the section of trellis that has been erected along the western boundary of the garden of Cue Cottage. For clarification the section of trellis to be retained is from the point where it meets the access gate to Cue Cottage to where it meets the southern boundary of the garden of Cue Cottage and abuts the entrance to the listed building. The Reporter therefore allowed the appeal on ground (f) to the extent that she considered that the removal of the trellis in its entirety would be excessive. The Reporter therefore varied the terms of the enforcement notice to reflect this.

D) IMPLICATIONS

Policy: None

Financial: None.

Personnel: None

Equal Opportunities: None

Author and Contact Officer: Morag Jardine (Tel: 01436 658964)

Angus J Gilmour

Head of Planning & Regulatory Services

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